

Pritam Singh Vs. Ranjit Singh

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Court : Rajasthan

Decided On : Aug-25-1970

Reported in : AIR1972Raj59; 1972CriLJ337

Judge : Kan Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107, 145 and 162;
[Code of Civil Procedure \(CPC\) , 1908](#) - Order 19, Rule 3

Appeal No. : Criminal Revision Nos. 88 and 89 of 1970

Appellant : Pritam Singh

Respondent : Ranjit Singh

Advocate for Def. : P.N. Datt and; B.R. Arora, Advs.

Advocate for Pet/Ap. : M. Mridul, Adv.

Disposition : Applications allowed

Judgement :
ORDER

Kan Singh, J.

1. These are two revision applications directed against the orders passed by the learned Sub Divisional Magistrate, Karanpur on 12-5-1969 in proceedings under

Section 145 Criminal Procedure Code. The two revision applications present similar features and can conveniently be disposed of together. I may narrate the facts with reference to S. B. Criminal Revision No. 88 of 1970.

2. Pritamsingh, Party No. 1, in the proceedings before the learned Sub Divisional Magistrate made an application under Section 145 Criminal Procedure Code to the learned Sub Divisional Magistrate on 17-9-1968 in respect of squares Nos. 33 and 35 of Chak No. 1 N, and alleged that the petitioner was in peaceful possession of these squares, but party No. 2, Ranjitsingh had unlawfully taken possession of the land and destroyed the crop raised by party No. 1. This land was entered in the name of Ram Singh's son Harbans Singh, Harbans Singh was alleged to have sold this land to party No. 2 Ranjitsingh, but in spite of the sale Pritamsingh Party No. 1 continued to be in possession thereof. Pritam Singh was the brother of Harbansingh's wife Jasbinder Kaur. Smt. Jasbinder Kaur, after the death of her husband started living with her brother Pritamsingh, No. 1. Harbans Singh had three children two daughters and one posthumous son born two months after Harbans Singh's death. On the day the application was made the learned Sub Divisional Magistrate passed a preliminary order and attached the land. Pritamsingh filed his statement claiming possession of the land in dispute. Both the parties filed a number of affidavits. Ranjitsingh filed 25 affidavits and Pritam Singh filed 34 affidavits. Pritamsingh also filed (1) the sale deed in his favour executed by late Harbans Singh; (2) Girdawari of Kharif 1968; (3) demand slip for 4 Kilas in the name of Ranjit Singh and for the remaining Kilas of the square in the name of Pritamsingh. He also examined DW 1 Sohanlal and DW 2 Anand Singh, the Station House Officer. On 12-5-1969, the learned Sub Divisional Magistrate declared Ranjitsingh to be in possession of the land.

3. The second revision application No. 89 of 1970 arises out of 145 Criminal Procedure Code proceedings launched before the learned Magistrate by Pritamsingh in respect of squares Nos. 33 and 35. In that case Ranjitsingh denied that the land was in possession of Pritamsingh and both the parties filed their respective affidavits and documents.

4. In the result, the learned Sub Divisional Magistrate declared these squares to be in possession of Ranjitsingh Pritam Singh first went up in revision before the learned Sessions Judge of Ganganagar who transferred the revision application to the Additional Sessions Judge who declined to make a reference. It is in these circumstances that Pritam Singh has come up in revision to this Court.

5. In assailing the orders of the learned Sub Divisional Magistrate learned counsel for the petitioner Pritam Singh submitted: (1) that the affidavits filed by Pritam Singh in support of his claim for possession in the two proceedings were not properly sworn by the various deponents and consequently the learned Sub Divisional Magistrate was in error in acting on those affidavits. The verification of the affidavits is broadly speaking of two kinds. In about 16 affidavits the deponents have stated like this:

eSa gYQu C;ku djrk gWa fd mijksq YQ&ukek; dh en u- 1 rks% 5 esjs tkfr bYe o ;dhu ls lgh o nq:Lr gS A fygkktg YQ&ukek; is'k A gS ----

in the remaining affidavits the verification stands as follows:--

^eSa g YQ&ukek; c;ku djrk gwafd mijks g YQ&ukek; dh en ua- 1 rs % 6 lp o fcYdwy lgh fy[kok;k gS dkbZ mijQkYrw o xyr ugha fy[kok;k o dksbZ mij fNik;k ugh gSa A fygkkt ;g g YQ ukek is'kgS**-

6. It was next submitted that the copies of the documents produced on behalf of Ranjitsingh were not duly certified copies, but the learned sub-Divnl. Magistrate had himself endorsed the copies as certified. It is not clear whether the copies were from the original record or from other certified copies. Then it was submitted by learned counsel that the Station House Officer, Anarsar had proved the admission of Ranjitsingh and Jaspalsingh son of Ranjitsingh in certain statements recorded by him. These statements appear to have been recorded in connection with certain 107 Criminal Procedure Code proceedings. It was pointed out that the learned Sub Divisional Magistrate was in error in thinking that Section 161 or 162 Criminal Procedure Code was attracted and the statements could have been made use of as previous statements in which a person had made an admission. In other words, according to the learned counsel the statements could be used for

proving the admission of the opposite party.

7. I have heard learned counsel for the parties. Now, the object of proceedings under Section 145 Crl. Procedure Code is to prevent a breach of peace, if in a dispute relating to land there is likelihood of such breach of peace. It is true, the learned Magistrate has to take effective steps to prevent a breach of peace and for that he is to determine the question regarding the actual possession of the land on the date of the preliminary inquiry or within next two months preceding it, by a summary inquiry. The amendment made in Section 145 Criminal Procedure Code in the year 1956 by enabling the magistrates to decide the question of possession by affidavits instead of recording evidence of witnesses in every case was with a view to resolving such disputes as speedily as possible and then leaving the parties concerned to have their rights determined from a competent court, if necessary. In such proceedings the affidavits form the bulk of the evidence and, therefore, such affidavits have to be sworn properly before a competent authority. Form of an affidavit has not been prescribed by Section 145 Criminal Procedure Code, but the term 'affidavit' though not defined in any statute has acquired a set form and meaning. Order 19 Rule 3 Civil Procedure Code provides what an affidavit shall contain. It lays down that the affidavit shall be confined to such facts as the deponent is able, of his own knowledge, to prove except on interlocutory applications on which statements of his belief may be admitted, provided the grounds thereof are stated. It is, therefore, necessary for a proper affidavit that it should be properly verified and must be restricted to matters of fact within the personal knowledge of the deponent. Then regarding facts which are not within the personal knowledge of the deponent, but they are statements regarding facts based on his belief then the grounds for the belief have also to be disclosed. An affidavit in the form that several paragraphs of the affidavit are true to the knowledge and belief is not a proper affidavit. Since the decision of the learned Magistrate, by and large, depended on the evidence before him in the shape of affidavits, such affidavits if they do not conform to the essentials of an affidavit as contained in Order 19, Rule 3 Civil Procedure Code would not be usable in evidence.

8. In *Bhair Gir v. Hanuman Prasad*, 1968 Raj LW 361 Mehta, J. has held that where an affidavit is not properly filed or verified the court cannot act on it. I find myself in agreement with my learned brother in this connection. The affidavits produced by Ranjitsingh could not, therefore, have been acted upon by the learned Sub Divisional Magistrate.

9. The next question is as to what is to be done in such a case. It does not appear that any objection was taken by the petitioner regarding this defect in the affidavits. It is true, the defect was there, but if it were pointed out the learned Magistrate could have called upon the party to rectify this defect by filing fresh affidavits according to law. In the aforesaid case Mehta, J. has further observed that the lacuna in the affidavit cannot be allowed to be removed. With all due deference to the learned Judge I find myself unable to share his view. The learned Judge had no occasion to consider the question as to what would happen if no objection is raised by the party concerned in the first court about the verification of the affidavit. No direct authority has been placed before me. Learned counsel for the opposite party has, however, invited my attention to some cases which afford some guidance in the matter.

10. In *Hemdan v. State of Rajas-than*, 1965 Raj LW 222 = (AIR 1966 Raj 5) Bhargava, J. came across certain affidavits in the case before him which were not found to be verified by a competent Magistrate. The affidavits which were not verified before a competent magistrate or authority were as good as no affidavits. In such a case Bhargava J. remanded the case to the trial court to afford an opportunity to the party concerned to have the affidavits properly verified. In that case it also appeared that in the first court no objection was raised regarding the authority by which the affidavit was verified. Learned Judge emphasised that it was the duty of the Sub Divnl. Magistrate before whom the proceedings were pending to decide the dispute and to receive evidence in the proceedings.

11. It thus appears that while Mehta J. has emphasised the speedy disposal of the proceedings he did not think that the lacuna regarding the affidavits be allowed to be made good; Bhargava J. on the other hand, has emphasised the duty of the learned magistrate to resolve the dispute between the parties and for that to

receive evidence,

12. Learned counsel for the opposite party also placed before me *Murarka Radhey Shyam v. Roopsingh*, AIR 1963 SC 1545, *Dwarka Nath v. I. T. Officer*, AIR 1966 SC 81 and *Som Dass v. State of Punjab*, AIR 1967 Punj 186, but in my view they are not applicable to a situation like the present one.

13. The course adopted by Bhargava J. in remanding the case to the first court for affording an opportunity to the party to make good the defect in the form of an affidavit commends itself to me.

14. The primary object of Section 145 Criminal Procedure Code is to prevent breaches of peace concerning land and that object is sought to be achieved by instituting an inquiry regarding the fact of actual possession and then disposing of the matter by a summary inquiry. Summary or speedy inquiry is after all aimed at prevention of the breach of peace and therefore, in a case where no objection is raised regarding the form of affidavits, when it should have been raised by a party, the case should not be thrown away merely because there is a formal defect in the verification of the affidavits, but such a defect be allowed to be made good.

15. Then I may come to the next point urged by learned counsel. The documents that were produced by Ranjitsingh were copies of certain entries in public record. It does not appear that the certified copies of the public record were produced before the learned magistrate. According to the provisions of Section 59 of the Evidence Act all facts except the contents of documents may be proved by oral evidence. The contents of documents may be proved either by primary or by secondary evidence (vide Section 61 of the Evidence Act.) Primary evidence means a document itself, by producing it for the inspection of the court. In the case of public documents as mentioned in Section 74 of the Evidence Act the document can be proved only by producing a certified copy thereof. A copy which is not certified as required by Section 76 of the Evidence Act will be inadmissible in evidence. In these circumstances the learned Sub Divisional Magistrate could not have accepted the copies which were not certified copies. Here also no objection seems to have been taken in the first court when the documents were produced. The opposite party should, therefore, be afforded an opportunity to produce the

certified copies.

16. I may next deal with the contention about the use of the statements of Ranjitsingh and Jaspalsingh which were said to have been recorded by the Station House Officer. Anarsar. Now these statements are said to have been recorded by the Station House Officer in connection with Section 107 Criminal Procedure Code proceedings. Proceedings under Section 107 Criminal Procedure Code are not in relation to commission of an offence. A police officer making an inquiry for his own satisfaction and for collecting evidence to be placed before the learned magistrate for action under Section 107 Criminal Procedure Code is not collecting evidence regarding the commission of an offence and, therefore, the provisions of Section 161 or 162 Criminal Procedure Code are not attracted in such a case. The statements recorded by a police officer in such a case are like any other previous statements of a person and if they contain any admission of such person, I do not think, there is any bar to the use of such statements for proving the admission of the person concerned. This is, however, not to say as to what should be the value of such an admission made before a police officer. It will be for the court concerned to evaluate such an admission in the light of the facts and circumstances of the case, but it was not right on the part of the learned magistrate to say that such a statement was not legally admissible evidence or that it could be used only for the purposes of corroborating or contradicting the maker of such statements. Admissions of a party are substantive evidence according to the Evidence Act, though their value will depend on the facts and circumstances of the case, as already observed.

17. Lastly, I may deal with the submission made by learned counsel for the opposite party that the report of the Station House Officer regarding the existence of the dispute was not admissible in evidence. Learned Counsel for the petitioner has not argued to the contrary. His submission however, was that the Station House Officer was examined only to prove the earlier statements of Ranjitsingh and Jaspalsingh. About them I have already made my observations. The magistrate should bear in mind that the report of a police officer not based on his personal knowledge cannot be read as evidence in the case.

18. Whatever I have observed above mutatis mutandis applies to the other proceedings which related to squares Nos. 33 and 35.

19. In the result I allow both the revision applications and set aside the orders of the learned Sub Divisional Magistrate, Karanpur in the two proceedings and remand both the cases to him for proceeding further in the matter according to law and in the light of the observations made above. The learned Magistrate will have the same interim arrangements regarding the land as were earlier made by him. The lands will continue to remain under attachment till the disposal of the two proceedings. Learned counsel for the petitioner, submitted that the opposite party had taken away Rs. 10,000/- after the order was passed by the learned magistrate and before the stay order was granted by this Court. He may move the learned magistrate for appropriate relief.

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